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4 DEPARTMENT OF JUSTICE

5 STATE OF OREGON

6 IN THE MATTER OF

7 STEVE UTILEY dba US MARKETING
8 DIRECT and dba NATIONWIDE FLEET
9 LIQUIDATORS and dba BANKERS
MARKETING; RGH MARKETING, INC ; and
10 ROB HUBBARD dba US MARKETING
DIRECT,

11 Respondents

NOTICE OF UNLAWFUL TRADE
PRACTICES AND PROPOSED
RESOLUTION

12 TO: STEVE UTILEY dba US MARKETING DIRECT and dba NATIONWIDE
13 FLEET LIQUIDATORS and dba BANKERS MARKETING
111 Bacon Creek Road
Elizabethtown, KY 42701

14 RGH MARKETING, INC
15 c/o John S Henricksen, Registered Agent
725 Portland Ave.
16 Gladstone, OR 97027

17 ROB HUBBARD dba US MARKETING DIRECT
13350 SE Kisor Court
18 Happy Valley, OR 97236

19 This notice is to inform you the Oregon Attorney General is authorized to file a lawsuit
20 against you 10 days after you receive this notice The Attorney General is required by statute to
21 give you this notice See Oregon Revised Statute 646 632

22 You may avoid the filing of a lawsuit by delivering an Assurance of Voluntary
23 Compliance [AVC] to the Financial Fraud Section of the Oregon Department of Justice within
24 10 days after you receive this notice

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1 An AVC must be in writing and state what actions you intend to take to resolve the
2 violations described below. The AVC is not an admission of violation of law and is submitted to
3 a Circuit Court for the State of Oregon for approval and filing.

4 Before submitting the AVC to the Circuit Court, it must be approved and accepted by the
5 Attorney General. Once filed with the court, any willful violation of the terms of an AVC is a
6 contempt of court which may result in punitive or remedial sanctions including confinement and
7 civil penalties of up to \$25,000 per violation.

8 This notice becomes a public record after 10 days have passed following your receipt of
9 this notice.

10 The Attorney General sent you this notice because there are concerns you violated the
11 Oregon Unlawful Trade Practices Act (UTPA), ORS 646.605 through ORS 646.656, in that:

12 Respondent STEVE UTLEY dba US MARKETING DIRECT and dba NATIONWIDE
13 FLEET LIQUIDATORS and dba BANKERS MARKETING creates, produces and sells direct
14 mail flyers to Oregon motor vehicle dealerships and mails said direct mail flyers on behalf of
15 said motor vehicle dealerships.

16 Respondent RGH MARKETING, INC. and Respondent ROB HUBBARD dba US
17 MARKETING DIRECT market the direct mail flyers created and produced by Respondent
18 STEVE UTLEY dba US MARKETING DIRECT and dba NATIONWIDE FLEET
19 LIQUIDATORS and dba BANKERS MARKETING and conduct sales of motor vehicles at
20 Oregon motor vehicle dealerships during the time of the "sale" advertised in the direct mail
21 flyers.

22 As outlined below, both the direct mail flyers and the sales at motor vehicle dealerships
23 violate the UTPA.

24 A. In a "pre-auction liquidation expo" direct mail flyer, created, produced, sold and
25 mailed by Respondent STEVE UTLEY dba US MARKETING DIRECT and dba
26 NATIONWIDE FLEET LIQUIDATORS and dba BANKERS MARKETING on behalf of Kirby

1 Car Company for an October 12-16, 2005 sales event and marketed to Kirby Car Company by
2 Respondent RGH MARKETING, INC and Respondent ROB HUBBARD dba US
3 MARKETING DIRECT:

4 1) On the front page of the flyer, the flyer lists 17835 SW Pacific Hwy, Tigard as
5 being the "NATIONWIDE FLEET LIQUIDATORS OFFICIAL EVENT SITE."
6 Nationwide Fleet Liquidators is not in the fleet business or the business of liquidations
7 and there is no official event Furthermore, Nationwide Fleet Liquidators is not an
8 Oregon dealer and the sale is in fact being conducted by Kirby Car Company, not
9 Nationwide Fleet Liquidators This is a violation of ORS 646 608(1)(e) because it
10 represents that goods or services have sponsorship, approval, characteristics, ingredients,
11 uses, benefits, quantities or qualities that they do not have or that a person has a
12 sponsorship, approval, status, qualification, affiliation, or connection that a person does
13 not have.

14 2) The front page of the flyer continues to read: "WHY PAY RETAIL? 276
15 VEHICLES BEING SOLD DIRECT TO THE PUBLIC BY NATIONWIDE FLEET
16 LIQUIDATORS " Consumers are paying retail prices; the cars are being sold from the
17 normal inventory of Kirby Car Company and are always sold to the public This is a
18 violation of ORS 646 608(1)(j) because it makes false or misleading representations of
19 fact concerning the reasons for, existence of, or amounts of price reductions
20 Furthermore, 276 vehicles were not available to be sold during the "sales event " This is
21 a violation of ORS 646 608(1)(i) because it advertises goods with intent not to provide
22 them as advertised Additionally, Nationwide Fleet Liquidators is not a licensed dealer in
23 the State of Oregon, which is a violation of ORS 822 005 and ORS 646 608(1)(aaa)

24 3) On the back page of the flyer, the headline reads: "NATIONWIDE FLEET
25 LIQUIDATORS COMING TO TIGARD FOR A PRE-AUCTION AUTO
26 LIQUIDATION EXPO " All unsold vehicles will not be sent to auction after the sale and

1 there was no liquidation of the dealer's inventory This is a violation of ORS
2 646 608(1)(j) because it makes false or misleading representations of fact concerning the
3 reasons for, existence of, or amounts of price reductions

4 4) Underneath the headline on the back page of the flyer is the statement: "All Titles
5 Have Been Cleared for Immediate Sale to the GENERAL PUBLIC for FIVE DAYS
6 ONLY " The vehicles are in the normal inventory of Kirby Car Company and are always
7 available for sale to the general public This is a violation of ORS 646 608(1)(p) because
8 it makes a false or misleading statement about a promotion used to publicize a product,
9 business or service.

10 5) Further down the back page of the flyer are the statements: "Absolutely Every
11 Vehicle being sold from just \$99/mo*" and "\$59 Down* and Take on the Payment!"
12 This is a violation of ORS 646 608(1)(i) because it is advertising goods or services with
13 intent not to provide them as advertised, or with intent not to supply reasonably
14 expectable public demand, unless the advertisement discloses a limitation of quantity
15 Many persons receiving the flyer will not be able to buy a car on the lot for \$59
16 down/\$99 a month.

17 6) The back page of the flyer continues with: "Agressive [sic] Bank Representatives
18 On Site during this event to lend over \$2,500,000 with only \$59 Down All vehicles
19 being sold from just \$99 mo*[] Expect DEEP DISCOUNTS & HIGH TRADE
20 APPRAISALS " As further explained in subparagraph 5 above, the \$59 down/\$99 a
21 month statement is a violation of ORS 646 608(1)(i) This is also a violation of ORS
22 646 608(1)(s) because it makes false or misleading representations of fact concerning the
23 offering price of, or the person's cost for goods or services

24 7) According to the flyer, a winning number can win one of three prizes: a "\$100
25 Walmart Shopping Card," a "\$250 Cash Prize," or a "3 Day 2 Nite Luxury Vacation "

26 There are no odds listed of the chances of winning any of these prizes and there are no

1 disclosure statements about potential charges incurred when redeeming the vacation and
2 the blackout dates. This is a violation of ORS 646.651(3) because the odds of winning
3 are not clearly and conspicuously disclosed in the solicitation. This is also a violation of
4 OAR 137-020-0440(11) because the verifiable retail value is not clearly and
5 conspicuously disclosed in arabic numerals. Furthermore, it is a violation of OAR 137-
6 020-0440(13) because it fails to clearly and conspicuously make any other disclosure that
7 is necessary to assure that the promotion is not misleading, unfair or deceptive.

8 B In a "public notice" direct mail flyer, created, produced, sold and mailed by
9 Respondent STEVE UTILEY dba US MARKETING DIRECT and dba NATIONWIDE FLEET
10 LIQUIDATORS and dba BANKERS MARKETING on behalf of Kirby Car Company and
11 marketed to Kirby Car Company by Respondent RGH MARKETING, INC. and Respondent
12 ROB HUBBARD dba US MARKETING DIRECT:

13 1) On the front page of the flyer, the headline reads: "PUBLIC NOTICE[:] Local
14 and National Banks will release liens on over 262 vehicles for immediate sale." Even
15 though there is no reference to a "disclosure" statement, on the bottom of the back page
16 of the flyer, a "disclosure" statement reads, in small font: "ALL VEHICLES SUPPLIED
17 BY INVENTORY OF KIRBY CAR COMPANY AND ITS' [sic] AFFILIATES
18 VEHICLES/LENDING INSTITUTIONS SUBJECT TO CHANGE." The initial "public
19 notice" statement is a violation of ORS 646.608(1)(c) because it causes likelihood of
20 confusion or of misunderstanding as to affiliation, connection, or association with
21 another. The "disclosure" statement is inadequate to modify the "public notice"
22 statement because it (a) materially changes what it purports to clarify and (b) is not
23 presented in a clear and conspicuous manner. Furthermore, 262 vehicles were not
24 available for sale. This is a violation of ORS 646.608(1)(i) because it advertises goods
25 with intent not to provide them as advertised.

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1 2) Underneath the headline on the front page of the flyer is the statement: "Over 262
2 Cars, Trucks, SUVs, Big Trucks, Vans, Diesels and more will be sold Direct to the Public
3 as Top Quality Reprocessed Vehicles." "Reprocessed vehicle" is a fictional term. This
4 violates ORS 646.608(1)(b) because it causes likelihood of confusion or of
5 misunderstanding as to the source, sponsorship, approval, or certification of real estate,
6 goods or services. Furthermore, these vehicles are always sold directly to the public and
7 implying otherwise due to "banks releasing liens" is an additional violation of ORS
8 646.608(1)(b).

9 3) Further down the front page of the flyer, across from the mailing address, in bold
10 letters, and on the middle of the back page is the statement: "PUBLIC NOTICE[:]
11 KIRBY CAR COMPANY FINAL CLEARANCE SALE." This is not a final clearance
12 sale; Kirby Car Company remains in business, is not disposing of all its inventory and
13 will have other sales in the future. This is a violation of ORS 646.608(1)(j) because it
14 makes false or misleading representations of fact concerning the reasons for, existence of,
15 or amounts of price reductions.

16 4) The front page of the flyer continues to read: "VEHICLES FROM \$99 DOWN*
17 Payments from Just \$99 Month*[] VEHICLES BEING SOLD FROM JUST \$99 A
18 MONTH!*" The disclosure statement that the asterisks refer to is on the bottom of the
19 back page of the flyer. The disclosure statement provides five examples of cars, but also
20 states that inventories may change and all vehicles are subject to prior sale. The bulk of
21 the advertisement implies that a substantial number of the 262 vehicles will be available
22 for \$99 down/\$99 a month; there is no readily visible statement that otherwise clarifies
23 the number of vehicles available at that price. Furthermore, the advertised vehicles may
24 not even be available for sale during the time period of the advertised sale. This is a
25 violation of ORS 646.608(1)(s) because it makes false or misleading representations of
26 fact concerning the offering price of, or the person's cost for goods or services.

1 5) The headline on the back page of the flyer reads: "MAJOR DISCOUNTS Being
2 Offered on over 262 Available Vehicles " The vehicles were sold at similar or higher
3 prices than they are offered for sale during the normal course of business. This is a
4 violation of ORS 646 608(1)(j) because it makes false or misleading representations of
5 fact concerning the reasons for, existence of, or amounts of price reductions.

6 6) The headline on the back page of the flyer continues to read: "BankersMarketing
7 has been retained by the dealership listed below to help sell off millions of dollars worth
8 of cars Auction Vehicles, Dealer Demos, Dealer Overstocks and Trades will be
9 available for five days " BankersMarketing has no affiliation with any financial
10 institution This is a violation of ORS 646 608(1)(e) because it represents that a person
11 has a sponsorship, approval, status, qualification, affiliation, or connection that the person
12 does not have Furthermore, these vehicles are not available for only five days. This is a
13 violation of ORS 646 608(1)(j) because it makes false or misleading representations of
14 fact concerning the reasons for, existence of, or amounts of price reductions

15 7) The back page of the flyer continues to read: "VEHICLES BEING SOLD FROM
16 \$99/mo Wednesday Through Sunday Only BECAUSE KIRBY CAR COMPANY HAS
17 ACQUIRED ADDITIONAL surplus inventory that must be sold " Kirby Car Company
18 did not acquire additional surplus inventory that had to be sold This is a violation of
19 ORS 646 608(1)(j) because it makes false or misleading representations of fact
20 concerning the reasons for, existence of, or amounts of price reductions.

21 8) The back page of the flyer further states: "We will have Bank Representatives on
22 site to ensure your best possible interest rate to save you even more money " Bank
23 representatives were not on site and all offers of credit were not at the lowest possible
24 rates for each consumer This is a violation of ORS 646 608(1)(k) because it makes false
25 or misleading representations concerning credit availability or the nature of the
26 transaction or obligation incurred

1 9) On the bottom of the back page of the flyer is the statement: "This could be your
2 Last Chance to purchase one of these UNCLAIMED VEHICLES!" The vehicles were
3 part of Kirby Car Company's normal inventory and therefore could be purchased at later
4 time than the sale and are not "unclaimed." This is a violation of ORS 646.608(1)(b)
5 because it causes likelihood of confusion or of misunderstanding as to the source,
6 sponsorship, approval, or certification of goods or services

7 10) The bottom of the last page also states: "BACKED BY ONE OF THE AREAS
8 [sic] LARGEST DEALERS " Kirby is not one of the area's largest dealers and this sale
9 was not "backed" by any other large dealership This is a violation of ORS 646.608(1)(c)
10 because it causes likelihood of confusion or of misunderstanding as to affiliation,
11 connection, or association with, or certification by, another.

12 C In a "pre-auction auto liquidation expo" direct mail flyer, created, produced, sold and
13 mailed by Respondent STEVE UTILEY dba US MARKETING DIRECT and dba
14 NATIONWIDE FLEET LIQUIDATORS and dba BANKERS MARKETING on behalf of
15 Newberg Dodge Chrysler Jeep for a November 17-20, 2005 sales event and marketed to
16 Newberg Dodge Chrysler Jeep by Respondent RGH MARKETING, INC and Respondent ROB
17 HUBBARD dba US MARKETING DIRECT:

18 1) On the front page of the flyer, the headline reads: "NATIONWIDE FLEET
19 LIQUIDATORS COMING TO NEWBERG FOR A PRE-AUCTION AUTO
20 LIQUIDATION EXPO " This is a violation of ORS 646.608(1)(j) as enumerated in
21 paragraph A(3) above

22 2) The front page of the flyer continues to read: "[W]e need to liquidate our used car
23 inventory EVERY USED VEHICLE MUST BE LIQUIDATED [and] UNSOLD
24 VEHICLES WILL BE SENT TO AUCTION " No entity involved in the event was
25 going out of business; therefore, there was no liquidation of inventory. Furthermore,
26 every vehicle will not be sold during the sale and all unsold vehicles will not be sent to

1 auction after the sale This is a violation of ORS 646 608(1)(j) because it makes false or
2 misleading representations of fact concerning the reasons for, existence of, or amounts of
3 price reductions.

4 3) In the middle of the front page of the flyer is the statement: "Good Credit, Bad
5 Credit or No Credit everybody rides! Agressive [sic] Bank Representatives On Site
6 during this event to lend over \$2,500,000 with only \$59 Down All vehicles being sold
7 from just \$99 mo[] Expect DEEP DISCOUNTS & HIGH TRADE APPRAISALS "
8 This is a violation of ORS 646 608(i) and (s) as enumerated in paragraph A(6) above

9 4) According to the front page of the flyer, a winning number can win one of three
10 prizes: a "\$100 Walmart Shopping Card," a "\$250 Cash Prize," or a "3 Day 2 Nite
11 Luxury Vacation " This is a violation of ORS 646 651(3) and OAR 137-020-0440(11)
12 and (13) as enumerated in paragraph A(7) above

13 5) On the top of the back page of the flyer is the statement: "NATIONWIDE FLEET
14 LIQUIDATORS OFFICIAL EVENT SITE." This is a violation of ORS 646 608(1)(e) as
15 enumerated in paragraph A(1) above

16 6) In the middle of the back page of the flyer is the statement: "276 VEHICLES
17 BEING SOLD DIRECT TO THE PUBLIC BY NATIONWIDE FLEET
18 LIQUIDATORS " This is a violation of ORS 646 608(1)(j), (i) and (aaa) as enumerated
19 in paragraph A(2) above

20 D During the advertised "sale" dates, Respondent RGH MARKETING, INC and
21 Respondent ROB HUBBARD dba US MARKETING DIRECT conduct and orchestrate sales of
22 motor vehicles at Oregon motor vehicle dealerships by providing additional staff under the titles
23 "Sales, Marketing and Management Consultants" or "sales people "

24 1) These additional salespersons are not licensed as motor vehicle dealers in the
25 State of Oregon This is a violation of ORS 646 608(1)(aaa), committing the offense of
26 acting as a vehicle dealer without a certificate under ORS 822 005

2) During the negotiation process, the salespersons will not disclose the offering price of a vehicle. This is a violation of ORS 646 608(1)(s) because it makes a false or misleading representation of fact concerning the offering price of, or the person's cost for goods or services.

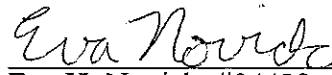
3) During the negotiation process, the salespersons state that they are acting on the consumer's behalf in negotiating the price of the vehicle. The salespersons do not comply with ORS 822 047 (regarding brokers) and are not brokers. This is a violation of ORS 646 608(1)(e) because the salespersons represent that they have status, qualification, affiliation or connection that they do not have.

If we file the lawsuit, we will ask the court to order you to pay:

- 1) Civil penalties of up to \$25,000 for each violation;
- 2) Restitution to anyone harmed by your acts; and,
- 3) Our reasonable attorney fees, costs and disbursements

In addition, we will ask the court to order that you be permanently enjoined from conducting any aspect of motor vehicle sales or advertising motor vehicles in the State of Oregon.

Dated this 8th day of February, 2006



Eva H. Novick #04429
Assistant Attorney General

REFER INQUIRES TO:

Eva H. Novick
Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Phone: (503) 947-4333